

NORTHERN TERRITORY LIQUOR COMMISSION
DECISION NOTICE

MATTER: *APPLICATION FOR MATERIAL ALTERATION BY ELLA BY MINOLI [2024] NTLiqComm 24*

REFERENCE: LC2024/021

APPLICANT: Ms Minnie Pty Ltd

PREMISES: Ella by Minoli
20/12 West Lane
DARWIN NT 0800

LICENCE NO.: FLL1926

LEGISLATION: Part 4 Division 2 of the *Liquor Act 2019*.

HEARD BEFORE: Mr Russell Goldflam (Chairperson)
Mr Bernard Dwyer (Health Member)
Ms Katrina Fong Lim (Community Member)

DATE OF DECISION: 14 June 2024

Decision

1. For the reasons set out below and in accordance with s 97 of the *Liquor Act 2019* (NT) (**the Act**) the Northern Territory Liquor Commission (**the Commission**) has determined to approve a material alteration to the premises of Ms Minnie Pty Ltd (**the applicant**) trading as Ella by Minoli at 20/21 West Lane Darwin NT 0800 (**the premises**) with liquor licence FLL1926 (**the licence**).
2. The approved alteration is to enlarge the Outdoor Area of the footprint of the premises to the area marked in pink on Annexure One to this decision notice.
3. The Commission approves the immediate commencement of business in the enlarged premises.

Reasons

Background

4. On 4 May 2022 the applicant applied for a liquor licence over premises in the Darwin CBD that had previously operated as a licensed restaurant called "Magic Wok".

5. On 21 June 2022 the Commission allowed the application and issued the applicant with the licence with a restaurant bar authority and a late night authority.¹
6. When that application was referred to the Commission, due to an administrative oversight, the plan of the premises provided to the Commission did not include an outdoor area along the wall of neighbouring premises on the northwest boundary of the site of the applicant's restaurant bar. The applicant now seeks to remedy that oversight by obtaining approval to operate its liquor licence over all of the outdoor area over which the Magic Wok had previously operated.

The Application

7. On 22 April 2024 the applicant completed lodging the documents required by the Director of Liquor Licensing (**the Director**) in support of an application for a material alteration. The application stated:

We would like to change the boundaries of our liquor licence as per our al fresco dining area stated in our lease. This includes extending our licence to the large wall of our al fresco area, leaving a walkway in between.

8. The Commission notes that the proposed extension of the premises is on City of Darwin property, a laneway that provides pedestrian and service vehicle access between West Lane and a nearby arcade until 17:00 hours, when the arcade closes. The applicant has a lease over this part of the laneway from the City of Darwin.

Consultation

9. The Director did not require the applicant to notify the public of the application.
10. As required by s 96 of the Act, the Director consulted with the Department of Health and NT Police. The Director also notified the NT Fire and Rescue Service of the application. None of these agencies objected to the application.
11. Section 96(6) provides that the Director was also required to notify the local council. This does not appear to have occurred, but the Commission notes that, firstly, the applicant has been granted a lease by the local council (the City of Darwin) over the portion of the premises the subject of this application; and secondly, that after 17:00 hours, the laneway is not used as a public thoroughfare. Accordingly, the Commission infers that had the council been consulted about this application, it would not have raised an objection. In all the circumstances, the Commission does not consider that this minor non-compliance with the Act invalidates the referral to the Commission of the application.

¹ Northern Territory Liquor Commission *Application for a licence and authorities* (LC2022/031), accessed at https://cmc.nt.gov.au/_data/assets/pdf_file/0020/1115741/ms-minnie-pty-ltd-ella-darwin-application-for-liquor-licence-and-authorities.PDF

The referral

12. On 3 June 2024 the Director referred the application to the Commission.
13. The Director provided the Commission with a brief (**the brief**) that included:
 - a. Liquor licence FLL1926
 - b. Correspondence between the applicant and the Director
 - c. Affidavit and Declaration of Associates pursuant to section 54 of the Act
 - d. Fire safety compliance notice
 - e. Extract from ASIC register
 - f. Amended lease from City of Darwin to applicant executed 9 April 2024
 - g. Site plan and photographs
 - h. Correspondence with stakeholders
 - i. Site plan of the premises as formerly operated by Magic Wok

The hearing

14. Pursuant to s 21 of the Act the Commission may direct that a hearing be conducted by way of written submissions if the Commission is of the opinion that it is not appropriate in the circumstances to conduct a public hearing because to do so would not be worthwhile or if the matter is not controversial. The Commission, having formed that opinion, determined to conduct the hearing by written submissions.

ASSESSMENT OF THE APPLICATION

15. Material alterations requiring the Commission's prior approval are described by s 95(1) of the Act as follows:
 - (a) a significant increase in the area of the premises used for the sale, supply, service or consumption of liquor;
 - (c) a change to an entrance to or an exit from the premises;
 - (d) a significant change to the external appearance of the premises;
 - (e) a significant change to the premises' facilities related to the sale, supply, service or consumption of liquor.
16. The proposed alteration to the premises may well not require the Commission's prior approval. The proposed increased area is 14.6 metres in length and about 1.5 metres wide. It is arguable that an increase of about 20 square metres, which the applicant estimates will accommodate an additional five tables, does not constitute a "significant" increase to the current licensed area of about 275 square metres. Nevertheless, for the purposes of this application, the Commission proceeds on the assumption that what is sought is a material alteration requiring the Commission's prior approval.
17. The Commission is satisfied, having regard to s 95(2) of the Act, that the alteration will not result in a contravention of any law of the Territory that regulates the sale of liquor or the construction of facilities used for the sale of

liquor. The Commission accepts that as the material alteration will not involve any construction work, no permits or consents are required to comply with planning and building laws.

18. The Commission is satisfied that the applicant has complied with the requirements in s 96(3) that this application be accompanied by:

- a. plans and specifications for the alteration; and
- b. NT Fire and Rescue Services notice of compliance;

19. In accordance with s 97, the Commission has considered the public interest and community impact requirements. The Commission is comfortably satisfied that the alteration will be in the public interest, and that it will not have any adverse impact, let alone a significant adverse impact, on the community.

20. The Commission notes that the conditions of the licence require the outdoor area to be closed at midnight, when all patrons remaining that area must move inside the premises.

21. As required by s 3(4) of the Act, the Commission has had regard to the purposes of the Act, and considers that its decision has been made in a way consistent with those purposes.

NOTICE OF RIGHTS

22. Section 31(1) read with section 97(4) of the Act provide that the decision set out in this decision notice is reviewable by the Northern Territory Civil and Administrative Tribunal (**NTCAT**). Section 94(3) of the *NTCAT Act* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision.

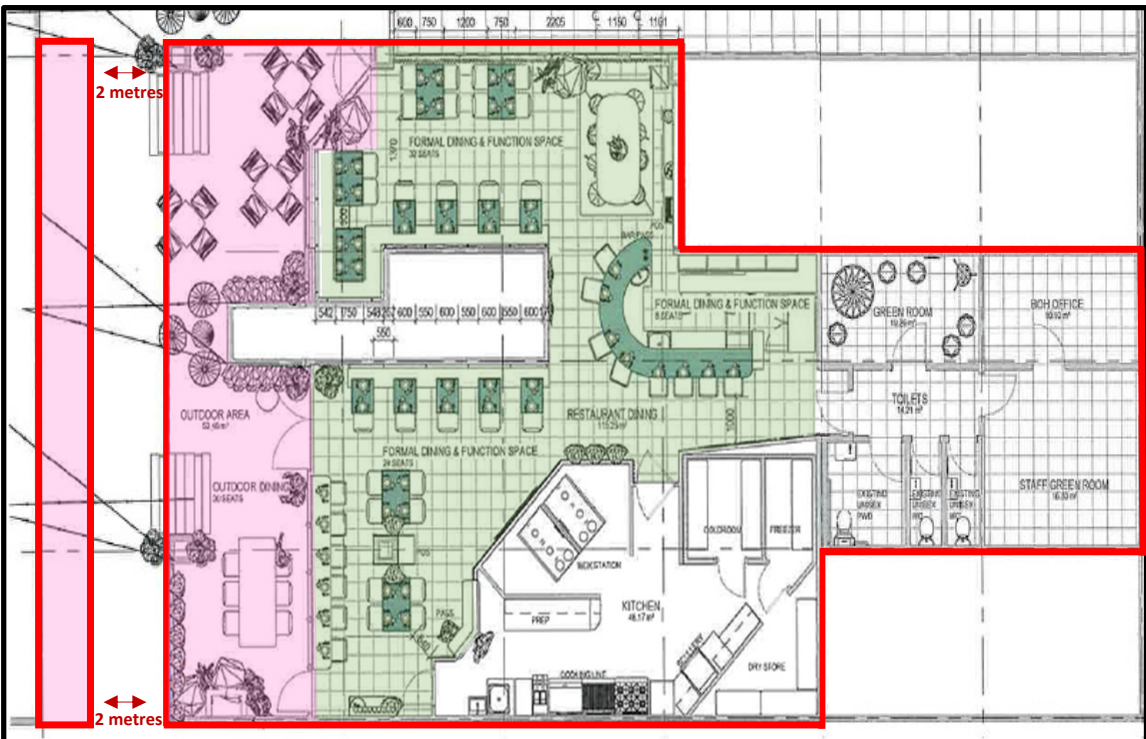
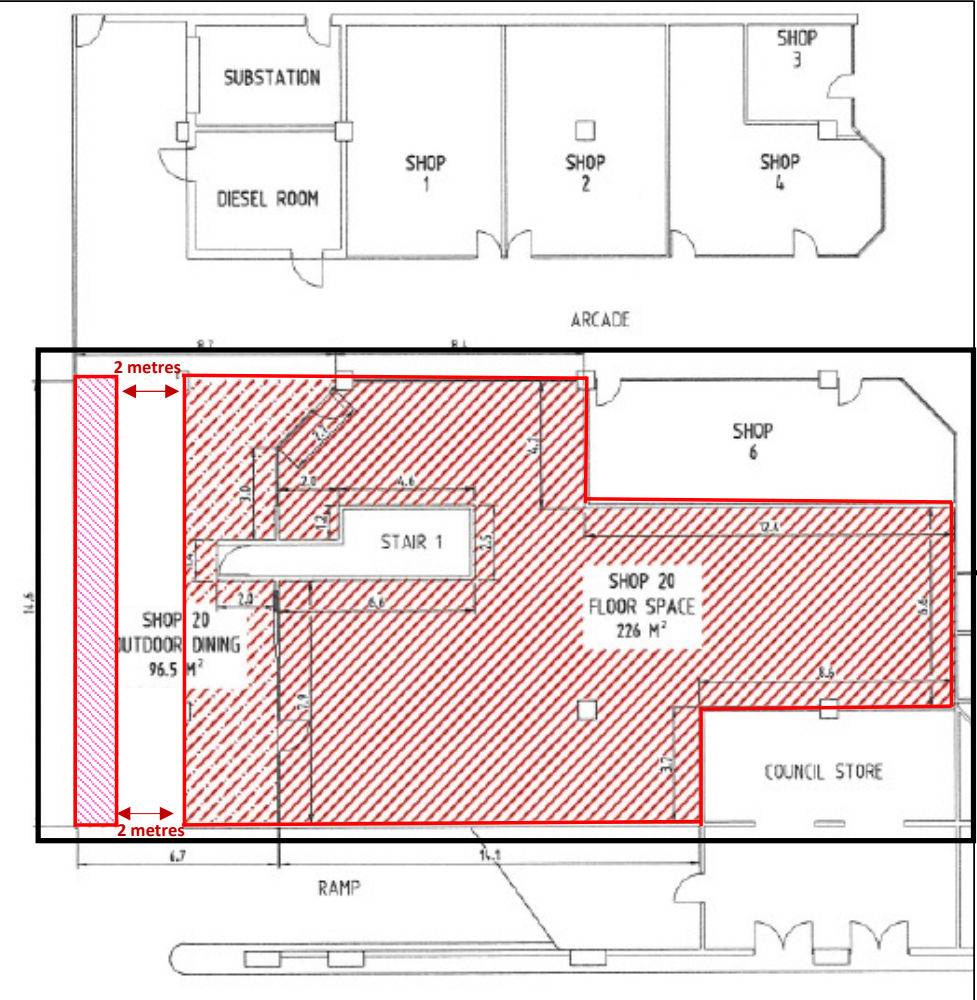
23. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of this decision are the Director and the licensee.



Russell Goldflam
CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION
14 June 2024

On behalf of Commissioners Goldflam, Dwyer and Fong Lim

Annexure One



Outdoor area
Functions and Dining Room